

BILL ANALYSIS

Senate Research Center

S.B. 614
By: Nichols et al.
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Finance Commission of Texas is the policymaking body that oversees the Texas Department of Banking (DOB), Department of Saving and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). Since 2009, the agencies have operated as self-directed, semi-independent agencies, meaning they operate outside of the legislative appropriations process.

This bill addresses the finance commission, DOB, and SML, which are subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature. The Sunset Commission's recommendations on OCCC are addressed in separate legislation. DOB regulates banks and trust companies, money services businesses, and certain death care providers; SML regulates state savings banks and mortgage loan providers.

The Sunset Advisory Commission concluded that overall the finance commission, DOB, and SML are well run, but recommends decreasing unnecessary regulation and implementing standard good government practices to increase licensure efficiency and operational transparency. (Original Author's/Sponsor's Statement of Intent)

S.B. 614 amends current law relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas, and to the regulation of certain financial institutions and businesses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas (finance commission) in SECTION 7 (Section 12.113, Finance Code), SECTION 10 (Section 13.017, Finance Code), SECTION 19 (Section 154.104, Finance Code), and SECTION 45 (Section 712.0036, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the finance commission is modified in SECTION 39 (Section 711.012, Health and Safety Code), SECTION 44 (Section 711.082, Health and Safety Code), and SECTION 47 (Section 711.048, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the finance commission is rescinded in SECTION 19 (Section 154.104, Finance Code) and SECTION 47 (Subchapter B, Chapter 396, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.108, Finance Code, as follows:

Sec. 11.108. SUNSET PROVISION. Provides that the Finance Commission of Texas (finance commission) is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the finance commission is abolished September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 11.110, Finance Code, by adding Subsections (d) and (e), as follows:

(d) Requires the commissioner of each finance agency to create a training manual that includes the information required by Subsection (b) (relating to requiring the training program to provide a person appointed to the finance commission with certain information) applicable to that commissioner's agency. Requires the commissioner of each finance agency to distribute a copy of the training manual created under this subsection annually to each member of the finance commission. Requires each member of the finance commission to sign and submit to the appropriate commissioner or statement acknowledging that the member received and has reviewed the training manual.

(e) Authorizes the commissioner of each finance agency, notwithstanding Subsection (d), to collaborate and jointly create one training manual that includes the information required by Subsection (b) applicable to each finance agency.

SECTION 3. Amends Subchapter B, Chapter 11, Finance Code, by adding Section 11.113, as follows:

Sec. 11.113. ADVISORY COMMITTEES. (a) Authorizes the finance commission to appoint advisory committees to assist the finance commission in performing its duties.

(b) Requires the finance commission to specify each committee's purpose, powers, and duties, and to require each committee to report to the finance commission in the manner specified by the finance commission concerning the committee's activities and the results of its work.

SECTION 4. Amends Section 11.202(b), Finance Code, to provide that the only duty of a hearings officer employed by the Texas Department of Banking (DOB) is to preside over matters related to contested cases before a finance agency, rather than before a finance agency or the finance commission.

SECTION 5. Amends Section 12.108, Finance Code, as follows:

Sec. 12.108. CONSUMER INFORMATION AND COMPLAINTS. (a) Requires DOB, rather than the banking commissioner, to maintain a system to promptly and efficiently act on complaints filed with DOB. Requires DOB to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring the banking commissioner to prepare and make available certain information.

(b) Requires DOB to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring DOB to maintain a file on each written complaint filed with DOB that contains certain information.

(c) Requires DOB to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring DOB to provide complaint parties a summary of DOB policies regarding complaints.

SECTION 6. Amends Section 12.109, Finance Code, as follows:

Sec. 12.109. SUNSET PROVISION. Provides that the office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the office is abolished September 1, 2031, rather than September 1, 2019.

SECTION 7. Amends Subchapter B, Chapter 12, Finance Code, by adding Sections 12.113 and 12.114, as follows:

Sec. 12.113. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) Requires the finance commission by rule to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of rules by the finance commission applicable to DOB, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under DOB's jurisdiction.

(b) Requires the procedures applicable to DOB relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires DOB to coordinate the implementation of the policy adopted under Subsection (a), to provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and to collect data concerning the effectiveness of those procedures.

Sec. 12.114. ADVISORY COMMITTEES. (a) Authorizes the banking commissioner to appoint advisory committees to assist DOB and the banking commissioner in performing their duties.

(b) Requires the banking commissioner to specify each committee's purpose, powers, and duties, and to require each committee to report to the banking commissioner or DOB in the manner specified by the banking commissioner concerning the committee's activities and the results of its work.

SECTION 8. Amends Sections 13.011(a), (b), and (c), Finance Code, as follows:

(a) Requires the Texas Department of Savings and Mortgage Lending (SML), rather than the savings and mortgage lending commissioner, to maintain a system to promptly and efficiently act on complaints filed with SML. Requires SML to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring the savings and mortgage lending commissioner to prepare certain information relating to SML and the complaint process.

(b) Requires SML to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring information prepared under Subsection (a) to be made available to the public and appropriate state agencies.

(c) Requires SML to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring SML to maintain a file on each written complaint filed with SML that includes certain information.

SECTION 9. Amends Section 13.012, Finance Code, as follows:

Sec. 13.012. SUNSET PROVISION. Provides that the office of savings and mortgage lending commissioner and SML are subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, the office and SML are abolished September 1, 2031, rather than September 1, 2019.

SECTION 10. Amends Chapter 13, Finance Code, by adding Sections 13.017 and 13.018, as follows:

Sec. 13.017. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) Requires the finance commission by rule to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to SML, and appropriate dispute

alternative resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under SML's jurisdiction.

(b) Requires the procedures applicable to SML relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by SOAH for the use of alternative dispute resolution by state agencies.

(c) Requires SML to coordinate the implementation of the policy adopted under Subsection (a), to provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and to collect data concerning the effectiveness of those procedures.

Sec. 13.018. ADVISORY COMMITTEES. (a) Authorizes the savings and mortgage lending commissioner to appoint advisory committees to assist SML and the savings and mortgage lending commissioner in performing their duties.

(b) Requires the savings and mortgage lending commissioner to specify each committee's purpose, powers, and duties and require each committee to report to the savings and mortgage lending commissioner or SML in the manner specified by the savings and mortgage lending commissioner concerning the committee's activities and the results of its work.

SECTION 11. Amends Sections 31.202 and 31.204, Finance Code, as follows:

Sec. 31.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Authorizes an appellant, except as expressly provided otherwise by this subtitle (Banks), to appeal a decision or order of the banking commissioner made under this subtitle or Chapter 12 (Texas Department of Banking) after a hearing to a district court in Travis County, rather than after a hearing directly to the District Court of Travis County, as provided by Section 31.204. Deletes existing text authorizing an appeal to be submitted to the finance commission for review at the option of the appellant.

Sec. 31.204. New heading: APPEAL TO DISTRICT COURT. Authorizes a person affected by a final order of the banking commissioner to appeal the final order by filing a petition for judicial review in a district court in Travis County as provided by Chapter 2001 (Administrative Procedure), Government Code, rather than authorizing a person affected by a final order of the banking commissioner who elects to appeal directly to district court, or a person affected by a final order of the finance commission under this chapter (General Provisions), to appeal the final order by filing a petition for judicial review in the District Court of Travis County as provided by Chapter 2001, Government Code.

SECTION 12. Amends Section 32.009(d), Finance Code, as follows:

(d) Authorizes a state bank that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section to appeal as provided by Sections 31.202 and 31.204, rather than Sections 31.202, 31.203 (Appeal to Finance Commission), and 31.204 or to resubmit a letter under this subsection with additional information or authority relevant to the banking commissioner's determination.

SECTION 13. Amends Section 32.010(d), Finance Code, to make a conforming change.

SECTION 14. Amends Section 35.0035(g), Finance Code, to make a conforming change.

SECTION 15. Amends Section 35.004(c), Finance Code, to make a conforming change.

SECTION 16. Amends Section 35.005(e), Finance Code, to make a conforming change.

SECTION 17. Amends Section 35.104(c), Finance Code, to make a conforming change.

SECTION 18. Amends Section 35.110(d), Finance Code, to make a conforming change and to delete existing text relating to authorized actions by the finance commission on appeal of an order to the finance commission.

SECTION 19. Amends Sections 154.104(a) and (b), Finance Code, as follows:

(a) Requires the finance commission by rule to prescribe the term of a permit issued under this subchapter (Permits), rather than providing that a permit is issued for a one-year term.

(b) Requires the finance commission, if the finance commission prescribes the term of a permit issued under this subchapter for a period other than one year, to prorate the fee required under this subchapter as necessary to reflect the terms of the permit. Deletes existing text authorizing the finance commission by rule to adopt a system under which permits expire on various dates during the year.

SECTION 20. Amends Section 154.415(f), Finance Code, to delete existing text including Section 31.203 among the sections providing for an appeal of a banking commissioner order prohibiting a person from participating in the business of prepaid funeral benefits sales.

SECTION 21. Amends Section 157.012(c), Finance Code, as follows:

(c) Requires an individual, to be eligible to be licensed as a residential mortgage loan originator, in addition to meeting the requirements of Subsection (a) (relating to licensing, compliance, and exemptions relating to residential mortgage loan originators), to:

(1) satisfy the banking commission as to the individual's honesty, trustworthiness, and integrity, rather than to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; and

(2)–(4) makes no changes to these subdivisions.

SECTION 22. Amends Sections 181.202 and 181.204, Finance Code, as follows:

Sec. 181.202. APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Authorizes, except as expressly provided otherwise by this subtitle (Trust Companies), a person affected by a decision or order of the banking commissioner made under this subtitle after a hearing to appeal the decision or order to a district court in Travis County as provided by Section 181.204. Deletes existing text authorizing such a person to appeal to the finance commission and makes nonsubstantive changes to this section.

Sec. 181.204. New heading: APPEAL TO DISTRICT COURT. Authorizes a person affected by a final order of the banking commissioner to appeal the final order by filing a petition for judicial review as provided by Chapter 2001, Government Code. Deletes existing text authorizing a person affected by a final order of the finance commission under this subchapter (Administrative Procedure) to make such an appeal and text relating to electing to appeal directly to the district court.

SECTION 23. Amends Section 182.010(d), Finance Code, to authorize a state trust company that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section (Parity) to appeal as provided by Sections 181.202 and 181.204, rather than Sections 181.202–181.204, or to resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination.

SECTION 24. Amends Section 185.0035(g), Finance Code, to make a conforming change.

SECTION 25. Amends Section 185.004(c), Finance Code, to make a conforming change.

SECTION 26. Amends Section 185.005(e), Finance Code, to make a conforming change.

SECTION 27. Amends Section 185.104(c), Finance Code, to make conforming changes.

SECTION 28. Amends Section 185.110(d), Finance Code, to make conforming changes and to delete existing text relating to authorized actions by the finance commission on an appeal to the finance commission.

SECTION 29. Amends Section 187.305(a), Finance Code, to make a conforming change.

SECTION 30. Amends Section 201.009, Finance Code, to make a conforming change.

SECTION 31. Amends Section 204.119, Finance Code, as follows:

Sec. 204.119. STATUS OF REVOKED LICENSE. Provides that a final order of the banking commissioner revoking a license, unless stayed by the district court that has jurisdiction over an appeal, rather than stayed by the finance commission or district court that has jurisdiction over an appeal, is effective immediately and requires the foreign bank making the appeal to immediately cease all activity in this state requiring a license.

SECTION 32. Amends Section 396.001(7), Finance Code, as follows:

(7) Provides that the term "private child support enforcement agency" includes a foreign agency. Provides that the term does not include:

(A)-(B) makes no changes to these paragraphs; or

(C) a contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency, including a contractor awarded a contract by a political subdivision of this or another state that is authorized by law to enforce a child support obligation, rather than awarded a contract under Chapter 236 (Competitive Bidding For Child Support Collection Services), Family Code, or by such a subdivision. Makes nonsubstantive changes.

SECTION 33. Amends Sections 396.202(a) and (b), Finance Code, as follows:

(a) Requires a private child support enforcement agency, rather than a registered agency, to maintain records of all child support collections made on behalf of, and disbursed to, a client who is an obligee, including certain records.

(b) Requires the records required under this section (Records) to be updated at least monthly and to be maintained by the private child support enforcement agency, rather than by the registered agency, for a period of four years from the date of the last support payment collected by the agency on behalf of an obligee.

SECTION 34. Amends Section 396.203(a), Finance Code, to require a private child support enforcement agency, rather than a registered agency and foreign agency authorized to engage in business under this chapter (Private Child Support Enforcement Agencies), to execute a written contract for the enforcement of child support for each client of the agency that is residing in this state.

SECTION 35. Amends Sections 396.251(a) and (b), Finance Code, to make conforming changes.

SECTION 36. Amends Section 396.252, Finance Code, as follows:

Sec. 396.252. FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. Prohibits, in enforcing a child support obligation, a private child support enforcement agency, rather than a registered agency, or employee of the agency from:

(1) identifying the agency by any name other than the one by which the agency is authorized to do business under the laws of this state, rather than identifying the registered agency by any name other than one by which the agency is registered with DOB; or

(2) and (3) makes no changes to these subdivisions.

SECTION 37. Amends Section 396.352(a), Finance Code, to provide that a private child support enforcement agency that is located in another state or that engages in the business of child support enforcement in this state in violation of this chapter, rather than a registered agency that is located in another state or a private child support agency that engages in the business of child support enforcement in this state in violation of this chapter, is considered to have submitted to the jurisdiction of the courts of this state with respect to an action brought under this chapter. Makes a nonsubstantive change to this subsection.

SECTION 38. Amends Section 711.001(6), Health and Safety Code, as follows:

(6) Provides that the term "cemetery broker" does not include a person who is an officer, agent, or employee of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization. Deletes existing text relating to a person who is exempt from registration under Subchapter C-1 (Cemetery Broker Registration).

SECTION 39. Amends Section 711.012(a), Health and Safety Code, to delete existing text that included Subchapter C-1 among the laws that the finance commission is authorized to adopt rules to enforce and administer.

SECTION 40. Amends Section 711.038(e), Health and Safety Code, to provide that a person, rather than a person who is an officer, agent, or employee of the cemetery organization or its affiliate and who is exempt from registration under Subchapter C-1, is not required to be licensed or registered to sell a plot in a dedicated cemetery.

SECTION 41. Amends Section 711.052(a), Health and Safety Code, as follows:

(a) Provides that a person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of the individual, firm, association, corporation, or municipality, commits an offense if the person:

(1)–(6) makes no changes to these subdivisions;

(7) makes a nonsubstantive change to this subdivision; or

(8) makes a nonsubstantive change. Deletes existing Subdivision (9) relating to a person who fails or refuses to register as a cemetery broker as required by Subchapter C-1.

SECTION 42. Amends Section 711.056(a), Health and Safety Code, to delete existing text authorizing a trier of fact in a hearing related to a violation of this chapter (General Provisions Relating to Cemeteries) or finance commission rules to recommend cancellation of a person's registration under Subchapter C-1 as a penalty and to make nonsubstantive changes to this subsection.

SECTION 43. Amends Section 711.059(a), Health and Safety Code, as follows:

(a) Authorizes the banking commissioner to issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and to issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the banking commissioner finds, by examination or other credible evidence, that the person:

- (1) makes no changes to this subdivision;
- (2) makes a nonsubstantive change to this subdivision; or
- (3) makes a nonsubstantive change to this subdivision and deletes Subdivisions (4) and (5) and existing text relating to registration under Subchapter C-1.

SECTION 44. Amends Sections 711.082(a) and (b), Health and Safety Code, as follows:

- (a) Requires DOB to administer Subchapter C (Cemetery Organizations), rather than Subchapters C and C-1, relating to cemetery brokers.
- (b) Makes conforming changes to this subsection.

SECTION 45. Amends Section 712.0036, Health and Safety Code, as follows:

Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. (a) Requires the finance commission by rule to prescribe the term of and renewal procedures for a certificate of authority issued under this chapter (Perpetual Care Cemeteries). Deletes existing text providing that an initial certificate of authority expires March 1 of the year after the year the certificate is issued. Deletes text requiring the certificate to be renewed at that time and by March 1 of each following year.

- (b) Requires the finance commission, if the finance commission prescribes the term of a certificate of authority issued under this chapter for a period other than one year, to prorate any application fees as necessary to reflect the term of the certificate.

SECTION 46. Amends Section 712.0037(a), Health and Safety Code, as follows:

- (a) Requires a certificate holder, in addition to certain other requirements, not later than the certificate's renewal date, rather than the certificate's annual renewal date, to:
 - (1) pay a renewal fee, rather than an annual renewal fee, in an amount established by finance commission rule; and
 - (2) makes no changes to this subdivision.

SECTION 47. Repealer: Section 13.011(d) (relating to requiring SML to provide certain information to parties to a complaint), Finance Code.

Repealer: Section 13.011(e) (relating to requiring SML to notify all parties involved in the complaint regularly of the complaint's progress), Finance Code.

Repealer: Section 31.203 (Appeal to Finance Commission), Finance Code.

Repealer: Section 181.203 (Appeal to Finance Commission), Finance Code.

Repealer: Section 396.001(8) (relating to the definition of "registered agency"), Finance Code.

Repealer: Subchapter B (Powers and Duties of Department), Chapter 396, Finance Code.

Repealer: Subchapter C (Registration), Chapter 396, Finance Code.

Repealer: Subchapter D (Authority of Foreign Agency to Engage in Business in this State), Chapter 396, Finance Code.

Repealer: Section 396.201 (Registration Prerequisite to Suit), Finance Code.

Repealer: Subchapter G (Administrative Enforcement), Chapter 396, Finance Code.

Repealer: Section 711.0381(a) (relating to prohibiting a person from acting as a cemetery broker unless properly licensed), Health and Safety Code.

Repealer: Subchapter C-1 (Cemetery Broker Registration), Chapter 711, Health and Safety Code.

SECTION 48. (a) Provides that, except as provided by Subsection (b) of this section, Section 11.110, Finance Code, as amended by this Act, applies to a member of the finance commission appointed before, on, or after the effective date of this Act.

(b) Provides that a member of the finance commission who, before the effective date of this Act, completed the training program required by Section 11.110, Finance Code, as that law existed before the effective date of this Act, is required to acknowledge that the member received and reviewed the training manual required by Section 11.110, Finance Code, as amended by this Act. Prohibits a member of the finance commission described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of the finance commission held on or after December 1, 2019, until the member of the finance commission acknowledges that the member received and reviewed the training manual.

SECTION 49. Makes application of Section 154.104, Finance Code, as amended by this Act, and Sections 712.0036 and 712.0037, Health and Safety Code, as amended by this Act, prospective.

SECTION 50. (a) Provides that, on the effective date of this Act, a certificate of registration that was issued under Section 396.106 (Issuance of Certificate of Registration), Finance Code, a certificate that was issued to operate in this state under Section 396.152 (Acceptance of Other Authorization Instead of Registration), or a registration that was issued under Subchapter C-1, Chapter 711, Health and Safety Code, expires.

(b) Provides that the repeal of a law by this Act does not entitle a person to a refund of an application, registration, or other fee paid by the person before the effective date of this Act.

SECTION 51. Provides that the changes in law made by this Act do not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date of this Act and that is pending before a court or other governmental entity on that date.

SECTION 52. (a) Provides that a violation of a law that is repealed by this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

(b) Provides that, for purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

SECTION 53. Effective date: September 1, 2019.